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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
Against:

Case No. 2013 - 582

13 **JODI SUZANNE RUSSO**

STATEMENT OF ISSUES

14 **Registered Nurse License Applicant**

15 Respondent.
16

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
21 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about July 25, 2012, the Board of Registered Nursing, Department of
24 Consumer Affairs received an application for a Registered Nurse License from Jodi Suzanne
25 Russo (Respondent). On or about July 18, 2012, Jodi Suzanne Russo certified under penalty of
26 perjury to the truthfulness of all statements, answers, and representations in the application. The
27 Board denied the application on October 12, 2012.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3) (A) Done any act that if done by a licentiate of the business or profession
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the
4 crime or act is substantially related to the qualifications, functions, or duties of the
5 business or profession for which application is made.

6 (b) Notwithstanding any other provision of this code, no person shall be denied
7 a license solely on the basis that he or she has been convicted of a felony if he or she
8 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
9 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
10 convicted of a misdemeanor if he or she has met all applicable requirements of the
11 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
12 person when considering the denial of a license under subdivision (a) of Section 482.

13 (c) A board may deny a license regulated by this code on the ground that the
14 applicant knowingly made a false statement of fact required to be revealed in the
15 application for the license.

16 7. Section 482 of the Code states:

17 Each board under the provisions of this code shall develop criteria to evaluate
18 the rehabilitation of a person when:

19 (a) Considering the denial of a license by the board under Section 480; or

20 (b) Considering suspension or revocation of a license under Section 490.

21 Each board shall take into account all competent evidence of rehabilitation
22 furnished by the applicant or licensee.

23 8. Section 2761 of the Code states:

24 The board may take disciplinary action against a certified or licensed nurse or
25 deny an application for a certificate or license for any of the following:

26 (a) Unprofessional conduct, which includes, but is not limited to, the
27 following:

28

(f) Conviction of a felony or of any offense substantially related to the
qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

. . . .

9. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning
of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

. . . .

1 (b) Use any controlled substance as defined in Division 10 (commencing with
2 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
3 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
4 dangerous or injurious to himself or herself, any other person, or the public or to the
5 extent that such use impairs his or her ability to conduct with safety to the public the
6 practice authorized by his or her license.

7 (c) Be convicted of a criminal offense involving the prescription, consumption,
8 or self-administration of any of the substances described in subdivisions (a) and (b) of
9 this section, or the possession of, or falsification of a record pertaining to, the
10 substances described in subdivision (a) of this section, in which event the record of
11 the conviction is conclusive evidence thereof.

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13 10. Section 2765 of the Code states:

14 A plea or verdict of guilty or a conviction following a plea of nolo contendere
15 made to a charge substantially related to the qualifications, functions and duties of a
16 registered nurse is deemed to be a conviction within the meaning of this article. The
17 board may order the license or certificate suspended or revoked, or may decline to
18 issue a license or certificate, when the time for appeal has elapsed, or the judgment of
19 conviction has been affirmed on appeal or when an order granting probation is made
20 suspending the imposition of sentence, irrespective of a subsequent order under the
21 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
22 or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
23 guilty, or dismissing the accusation, information or indictment.

24 REGULATORY PROVISIONS

25 11. California Code of Regulations, title 16, section 1444 states:

26 A conviction or act shall be considered to be substantially related to the
27 qualifications, functions or duties of a registered nurse if to a substantial degree it
28 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations
listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section
290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code,
the board, in evaluating the rehabilitation of the applicant and his/her present
eligibility for a license will consider the following criteria:

1 (1) The nature and severity of the act(s) or crime(s) under consideration as
2 grounds for denial.

3 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
4 under consideration as grounds for denial which also could be considered as grounds
5 for denial under Section 480 of the code.

6 (3) The time that has elapsed since commission of the act(s) or crime(s)
7 referred to in subdivision (1) or (2).

8 (4) The extent to which the applicant has complied with any terms of parole,
9 probation, restitution, or any other sanctions lawfully imposed against the applicant.

10 (5) Evidence, if any, of rehabilitation submitted by the applicant.

11

12 **FIRST CAUSE FOR DENIAL OF APPLICATION**

13 **(April 29, 2005 Criminal Conviction for DUI on March 18, 2005)**

14 13. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
15 and 2761, subdivision (f) of the Code in that she was convicted of a crime that is substantially
16 related to the qualifications, duties, and functions of a registered nurse. The circumstances are as
17 follows:

18 a. On or about April 29, 2005, in a criminal proceeding entitled *People of the*
19 *State of California v. Jodi Suzanne Russo*, in San Diego County Superior Court, case number
20 CN193001, Respondent was convicted on her plea of guilty to violating Vehicle Code section
21 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. The court
22 dismissed an additional count of violating Vehicle Code section 23152, subdivision (b), driving
23 with a blood alcohol concentration (BAC) of .08 percent or higher, pursuant to a plea agreement.
24 The court certified Respondent's BAC as .19 percent.

25 b. As a result of the conviction, on or about April 29, 2005, Respondent was
26 sentenced to serve 180 days in jail, suspended, pending successful completion of three years
27 summary probation. Respondent was ordered to complete three days in the Public Service Work
28 Program, with credit for one day, attend and complete a three-month First Conviction Program
and a MADD Victim Impact Panel session, pay fees and fines in the amount of \$1,800, and to
comply with DUI probation terms.

1 c. The circumstances that led to the conviction are that on or about March 18,
2 2005, Respondent was arrested by the California Highway Patrol at a U.S. Border Patrol
3 checkpoint for driving under the influence of alcohol.

4 **SECOND CAUSE FOR DENIAL OF APPLICATION**

5 **(June 29, 2011 Criminal Conviction for DUI With Prior on February 5, 2011)**

6 14. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
7 and 2761, subdivision (f) of the Code in that she was convicted of a crime that is substantially
8 related to the qualifications, duties, and functions of a registered nurse. The circumstances are as
9 follows:

10 a. On or about June 29, 2011, in a criminal proceeding entitled *People of the*
11 *State of California v. Jodi Suzanne Russo*, in San Diego County Superior Court, case number
12 M126799, Respondent was convicted on her plea of guilty to violating Vehicle Code section
13 23152, subdivision (b), driving with a BAC of .08 percent or higher, a misdemeanor. The court
14 found true the special allegation that Respondent was previously convicted of violating Vehicle
15 Code section 23152, subdivision (a) within the previous ten years within the meaning of Vehicle
16 Code section 23626 and 23540. The court dismissed an additional count of violating Vehicle
17 Code section 23152, subdivision (a), driving under the influence of alcohol, pursuant to a plea
18 agreement. The court certified Respondent's BAC as .21 percent.

19 b. As a result of the conviction, on or about June 29, 2011, Respondent was
20 sentenced to serve 96 hours in the custody of the San Diego County Sheriff's work release
21 program, and she was granted summary probation for five years. Respondent was ordered to
22 complete 20 days in the Public Service Work Program, with credit for two days, attend and
23 complete an 18-month Multiple Conviction Program and a MADD Victim Impact Panel session,
24 pay fees and fines in the amount of \$2,539, and to comply with DUI probation terms.

25 c. The circumstances that led to the conviction are that on or about the
26 evening of February 5, 2011, an officer with the San Diego Police Department was conducting
27 radar patrol and observed Respondent traveling in her vehicle and exceeding the speed limit.
28 After conducting a traffic stop, the officer observed that Respondent's eyes were bloodshot,

1 watery and droopy, her face was lax, her speech was slurred, and there was an odor of an
2 alcoholic beverage on her breath. Respondent submitted to a series of field sobriety tests, none of
3 which she was able to complete as explained and demonstrated by the officer. Respondent
4 provided two breath samples which were analyzed by the preliminary alcohol screening device
5 with a BAC of .214 percent. Respondent was arrested for driving under the influence.

6 **THIRD CAUSE FOR DENIAL OF APPLICATION**

7 **(Dangerous Use of Alcohol)**

8 15. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
9 of the Code for unprofessional conduct in that on or about March 18, 2005 and February 5, 2011,
10 Respondent used alcoholic beverages to an extent or in a manner that was dangerous and
11 potentially injurious to herself and the public when she operated a motor vehicle while
12 significantly impaired by alcohol, as detailed in paragraphs 13 and 14, above, which would be a
13 ground for discipline under section 2762, subdivision (b) of the Code for a licensed registered
14 nurse.

15 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

16 **(Alcohol-Related Convictions)**

17 16. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
18 of the Code for unprofessional conduct in that on or about April 29, 2005 and June 29, 2011,
19 Respondent was convicted of alcohol-related offenses, as detailed in paragraphs 13 and 14,
20 above, which would be a ground for discipline under section 2762, subdivision (c) of the Code for
21 a licensed registered nurse.

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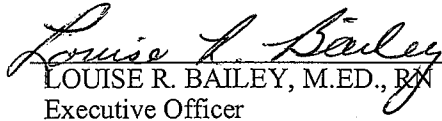
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Jodi Suzanne Russo for a Registered Nurse License;
2. Taking such other and further action as deemed necessary and proper.

DATED: JANUARY 24, 2013


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2012704581